




**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**MEMORANDUM**

**TO:** Office of the Commission Secretary

**FROM:** Office of General Counsel 

**DATE:** July 7, 1999

**SUBJECT:** MUR 4434- General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of \_\_\_\_\_

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

**CIRCULATIONS**

**SENSITIVE**

☒

**NON-SENSITIVE**

☐

**72 Hour TALLY VOTE** ☒

**24 Hour TALLY VOTE** ☐

**24 Hour NO OBJECTION** ☐

**INFORMATION** ☐

**DISTRIBUTION**

**COMPLIANCE**

☒

**Open/Closed Letters** ☐

**MUR** ☐

**DSP** ☐

**STATUS SHEETS** ☐

**Enforcement** ☐

**Litigation** ☐

**PFESP** ☐

**RATING SHEETS** ☐

**AUDIT MATTERS** ☐

**LITIGATION** ☐

**ADVISORY OPINIONS** ☐

**REGULATIONS** ☐

**OTHER** ☐

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Outback Steakhouse of Florida, Inc.;

Joseph J. Kadow; Robert Basham;

Chris Sullivan; and Dan Doyle

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MUR 4434

**SENSITIVE**

GENERAL COUNSEL'S REPORT

**I. BACKGROUND**

On September 9, 1997, the Commission found reason to believe Outback Steakhouse of Florida, Inc. ("Outback") and Mark Sharpe for Congress and Mark Brown, as treasurer, ("the Sharpe Committee"), each violated 2 U.S.C. § 441b(a) through the making and acceptance, respectively, of corporate contributions during the 1994 general election campaign for the seat in the U.S. House of Representatives from Florida's 11<sup>th</sup> Congressional District. These findings were based on evidence which suggested that Outback had conducted a concerted effort to engender financial support for the Sharpe campaign, that this effort had gone beyond allowable activity - such as partisan communications to a restricted class - to the collecting and delivering of contributions, and that Outback officers Joseph Kadow, Chris Sullivan and Robert Basham apparently had approved of, and taken part in, this activity.<sup>1</sup> The Commission also made findings at that time against Outback executives Joseph Kadow, Chris Sullivan and Robert Basham for their apparent roles in facilitating the making of corporate contributions, and against the Sharpe Committee for certain reporting violations.

In addition, the Commission approved subpoenas and orders designed to gather information regarding the scope of the corporate effort. To that end, the Commission sought

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<sup>1</sup> At the time of the events in this matter, Joseph Kadow was Vice-President and General Counsel, Chris Sullivan was Chief Executive Officer, and Robert Basham was Chief Operating Officer.

documents and responses to questions from the Sharpe Committee, Outback and Robert Basham, Chris Sullivan and Joseph Kadow, and from Outback franchisees who had indicated that they had contributed to the Sharpe Committee at the behest of Outback officials. In addition, this Office conducted informal interviews with Terry Franck (née Spirio), a Sharpe campaign volunteer, and with certain individual contributors whose mailing addresses were given as the Outback headquarters address, but who were not identified as working for Outback; these latter interviews addressed the circumstances of the contributions.

A review of the responses at this first stage of discovery indicated that additional discovery was required, and this Office submitted a General Counsel's Report to the Commission on May 22, 1998 recommending the issuance of additional subpoenas and orders. On June 9, 1998, the Commission approved further discovery to be sent to corporations and individuals whose names appeared on certain mailing lists and draft solicitation letters. Attempts to locate Rick Fontaine, the Sharpe Committee's treasurer at the time of the activities in question and a potentially significant witness, have proven unproductive.

The activities which comprised the bases for the reason to believe findings against Outback are threefold: first, that Outback made in-kind corporate contributions through the provision of aircraft to enable Joseph Kadow to fly around the country and solicit and accept contributions; second, that Outback made corporate contributions by using corporate resources, including telephones and corporate letterhead, to solicit contributions from outside of the corporation's restricted class; and third, that Outback made corporate contributions through the collection by the corporation of contributions and their delivery to the Sharpe campaign. This report discusses the current state of the evidence regarding each of these activities and makes recommendations regarding Commission action with respect to Outback and Outback officials

Joseph Kadow, Robert Basham and Chris Sullivan, and with regard to a contributor, Dan Doyle, in light of this evidence. Commission action regarding the Sharpe Committee and its treasurer will be addressed in a separate report.

## II. ANALYSIS

### A. The Law

Pursuant to 2 U.S.C. § 441b(a), it is illegal for any corporation to make a contribution or expenditure in connection with any election for Federal office, or for any officer or director of a corporation to consent to any such contribution or expenditure. When applied to corporations, the terms "contribution" and "expenditure" include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any" Federal office. 2 U.S.C. § 441b(b)(2)(A). The terms "contribution" and "expenditure" do not include communications by a corporation to its restricted class on any subject. 2 U.S.C. § 441b(b)(2)(A) and 11 C.F.R. § 114.3(a)(1). The members of a corporation's restricted class include "its stockholders, and executive or administrative personnel, and their families, and the executive and administrative personnel of its subsidiaries, branches, divisions, and departments and their families." 11 C.F.R. § 114.1(j). "Executive and administrative personnel" include individuals who are employed by a corporation "who are paid on a salary rather than an hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities." 11 C.F.R. § 104.1(c). "Partisan communications under section 114.3 may solicit or suggest that the individual member [of the restricted class] make a contribution to a particular candidate . . . ." AO 1987-29.

The Commission's regulations do not directly address the relationship of a corporation's franchisees and joint venture partners to the definition of "restricted class" at 11 C.F.R.

§ 114.1(j). In most instances, however, a corporation's restricted class is the same as its solicitable class. *See, e.g.*, Explanation and Justification for Regulations on Corporate and Labor Organization Activity; Express Advocacy and Coordination With Candidates, 60 Fed. Reg. 64,260 at 64,263 (1995).<sup>2</sup> Therefore, it is helpful in the present matter to look to other instances where the Commission has examined franchisees/joint venture partnerships and their solicitable classes to determine whether the factors found there are also present here.

Pursuant to 11 C.F.R. § 114.5(g)(1), "a corporation may solicit the executive or administrative personnel of its subsidiaries, branches, divisions, and *affiliates* and their families." (Emphasis added). This same provision then refers to 11 C.F.R. § 100.5(g)(4) for the factors to be used in determining whether an organization is affiliated with a corporation. Pursuant to section 100.5(g)(4)(ii), which addresses the affiliation of separate segregated funds, such factors include:<sup>3</sup>

- (A) Whether a sponsoring organization owns controlling interest in the voting stock or securities of the sponsoring organization of another committee;
- (B) Whether a sponsoring organization or committee has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;

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<sup>2</sup> Two exceptions to this statement which are noted in the Explanation and Justification, and which are not applicable here, are incorporated trade associations and certain cooperatives.

Although the Explanation and Justification cited here relates to regulations promulgated after the events in this matter occurred, it does reflect new interpretations of the law. Rather, it summarizes the Commission's consistent view of the Act and regulations as applied to a set of facts similar to those at issue here.

<sup>3</sup> Section 100.5(g)(2) provides that all committees "established, financed, maintained or controlled by the same corporation, . . . including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated. *Local unit* may include, in appropriate cases, a franchisee [or] licensee."

(C) Whether a sponsoring organization or committee has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members of another sponsoring organization or committee;

...

(E) Whether a sponsoring organization or committee has common or overlapping officers or employees with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;

(F) Whether a sponsoring organization or committee has any members, officers or employees who were members, officers or employees of another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees, or which indicates the creation of a successor entity; [and]

...

(I) Whether a sponsoring organization or committee or its agent had an active or significant role in the formation of another sponsoring organization or committee. . . .

Prior to the addition of affiliation factors to the regulations at section 114.5(g)(1) in 1989, the Commission had determined that a franchise holder is within a corporation's solicitable class when the licensor-franchisor's "continuing control and direction over the business policies, practices, and procedures of its licensees, as well as the nature and extent of the licensees' contractual obligation to the corporation, make the [licensor-franchisor] and its licensees affiliates within the meaning of the Act and Commission regulations." AO 1979-38. In AO 1988-46, the Commission determined that Collins Food International, Inc., which owned 63 percent of Sizzler Restaurants International, Inc., could solicit contributions to its separate segregated fund from Sizzler licensees. The Commission looked at Sizzler's standard license agreement, which set out the scope of control and oversight which Sizzler maintained over its licensees, and which was extensive: licensees were required to operate Sizzler restaurants in

strict accordance with certain standards and policies which provided for "the uniform operation of all Sizzler restaurants, including . . . serving only approved food and beverage products, using only equipment and architectural design and layouts approved by [Sizzler] and strictly adhering to [Sizzler's] prescribed standards of quality, service and cleanliness." With this evidence, the Commission was able to conclude that Sizzler's licensees were affiliates of Collins and thus their executive and administrative personnel were eligible to be solicited.

Prior to the addition of affiliation factors at Section 114.5(g)(1), the Commission noted that "the joint venture partnership . . . constitutes the type of relationship that, pursuant to 2 U.S.C. § 441a(a)(5) and Commission regulations 11 C.F.R. § 100.5(g), would result in the affiliation of their respective separate segregated funds with each other, and with any political committee established by (or connected with) the . . . [p]artnership." AO 1981-54. Thus, the test for determining whether joint venture partnerships are within a corporation's solicitable class has long been the same as that for franchise holders.

A corporation's communication to its restricted class recommending that it contribute to a specific candidate is valid, "so long as the corporation limits its activity to communication only and does not actually facilitate the making of the member's contribution to the candidate." AO 1987-29. Activity which constitutes corporate facilitation, and is thus prohibited, includes the corporation acting as a conduit or intermediary by collecting earmarked contributions and delivering them to the candidate. *See* AO 1986-4. Such activity is specifically prohibited by Commission regulations at 11 C.F.R. § 110.6(b)(2)(ii). An individual who has been expressly authorized to engage in fundraising on behalf of a candidate, and who occupies a significant position within the candidate's campaign organization, is not considered a conduit, and thus does not have to file reports of conduit activity; however, in collecting and delivering the

contributions, that individual must not be acting in his or her capacity as a representative of an entity prohibited from making contributions. *See* 11 C.F.R. § 110.6(b)(2)(i)(E).

Pursuant to 2 U.S.C. § 441a(a)(1)(A), no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. Pursuant to 2 U.S.C. § 441f, no person shall make a contribution in the name of another person.

### **C. Application of the Law to the Facts**

#### **1. Scope of Outback's Restricted/Solicitable Class**

Outback's description of its relationship with its restaurants is as follows: "Outback is a publicly held corporation that has interests in approximately 350 Outback Steakhouse restaurants across the country. Approximately 15% of the Outback Steakhouses across the country are currently operated by independent franchisees. Outback has ownership interests in all of the remaining restaurants. These 'company owned' restaurants are organized as partnerships in which Outback is the general partner and has an ownership interest of 81-90%. The remaining 10-19% interest is owned by restaurant general managers and 'joint venture partners,' or 'JVPs.'"

Outback has produced copies of generic joint venture partner and franchise agreements which show the extent of control Outback maintains over their respective operations.<sup>4</sup> With regard to the franchisees, the standard agreement with Outback notes that Outback has developed and owns "a unique, distinctive system for the establishment and operation of full service restaurants featuring a specialized menu and full bar service," that the distinguishing characteristics of this system include, without limitation, "special recipes and menu items;

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<sup>4</sup> These documents, totaling 101 pages, have not been attached to this Report. One set of copies will be submitted to the Commission Secretary's office and will be available for Commissioners to review.



distinctive design, decor and furnishings; uniform standards, specifications, and procedures for operations, quality and uniformity of products and services offered; procedures for inventory and management control; training and assistance; and advertising and promotional programs; all of which may from time to time be changed, improved, and further developed by [Outback]." The Outback franchise is operated in accordance with this system. The conditions outlined above replicate those cited by the Commission in AO 1988-46 as evidence that the executive and administrative personnel of the franchise in question were in that instance within the solicitable class of the franchisor. Thus, it appears that the executive and administrative personnel of Outback franchisees are within Outback's solicitable class, and thus within its restricted class.

Outback's joint venture partnerships are set up much differently than those with which the Commission has previously come in contact. Each partnership is formed to manage Outback restaurants in specific geographic areas. Outback serves as the general partner, and there are individuals who serve as limited partners. Under the agreement, one limited partner is the sole shareholder and director of the JVP. That individual is also directly employed by Outback as Operations Director "responsible for day-to-day supervision of Restaurants located or to be located within the Territory." It is these individuals who were solicited by Outback executives for contributions to the Sharpe campaign.

Although an analysis of the relationship between Outback and its joint venture partners using the method described above would likely result in the conclusion that the limited partners were within the restricted class, that step does not appear necessary, given the fact that the limited partners are employed directly by Outback. The standard employment agreement between Outback and such limited partners provides for payment of an annual base salary of

and for other benefits such as life and health insurance, should they be

provided generally to Operations Directors of Outback. The duties of the Operations Director are to "supervise the operations of the Outback Steakhouse restaurants established by the Partnership, and [to] use his best efforts to secure suitable locations for Outback Steakhouse restaurants . . . as [Outback], in its sole discretion, may approve."

The description of the duties of the Operations Directors appears to place them within the Commission's regulation defining "executive and administrative personnel." Accordingly, they are within its restricted class.<sup>5</sup>

## **2. Use of Corporate Resources to Solicit Contributions**

Statements reported in the article in the *Tampa Tribune* which served as the basis for the complaint in this matter seemed to demonstrate Outback's corporate interest and involvement in the 1994 Sharpe campaign. As quoted in the article, Joseph Kadow appeared to confirm Outback's interest in the race, and in supporting Sharpe in particular, by stating: "We asked our friends for help. Nobody's denying that. . . . We thought this was a race Mark could win, and we thought [the incumbent] was someone who had not been a friend to our business or to business in general." The same *Tampa Tribune* article also suggested that Outback executives other than Kadow were instrumental in obtaining contributions for the Sharpe campaign, and that those who contributed understood this effort to be on behalf of Outback. The article quoted a number of contributors with Outback connections who explained the reasons for their contributions, and who stated that they had contributed at the behest of either Chris Sullivan or Robert Basham, both Outback executives.

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<sup>5</sup> The names of the joint venture partnerships do not necessarily betray the Outback connection. Such partnerships, identified on Sharpe campaign reports as "Employers", include T-Bird Restaurant Group, Inc., Danker Restaurants, Connerty and Associates, Aaron Restaurant Group, J&R Restaurant Group, Inc., Sink Corporation, and others.

As the discussion above regarding franchisees and joint venture partners indicates, when Outback executives solicited Outback executive and supervisory personnel of these entities for contributions, such activity was apparently within the exceptions to the strictures of 2 U.S.C. § 441b(a), pursuant to 2 U.S.C. § 441b(b)(2)(A). Documents obtained in discovery, and discussed in the General Counsel's Report dated May 22, 1998, suggested, however, that Outback personnel, in their roles as Outback executives, also solicited contributions from outside the extended Outback corporate structure and thus outside the restricted class.

One of those documents was a computer-generated copy of a letter, with an accompanying list of addresses for five individuals at other corporations (Cracker Barrel Old Country Store, Inc.; S&A Restaurant Corp.; Sizzler International, Inc.; TGI Friday's; and General Mills Restaurants, Inc.), which solicited contributions to the Sharpe campaign, and which asked that the recipients "send [their] checks to Rick Berman or me so that Mr. Sharpe will understand the extent of support from the restaurant industry." Attachment 1. The typed signature line for this letter read, "Joseph J. Kadow, Vice-President and General Counsel."<sup>6</sup> As with other copies or documents submitted by Outback in response to discovery requests, this letter was provided in draft form; Outback has stated that it is not sure that the letter was ever sent.

The Commission sent subpoenas to the five corporations on the attached mailing list, seeking to discover whether they had ever received any such solicitation letter. The responses to the Commission subpoenas failed to demonstrate that the five corporations received any

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<sup>6</sup> Although the computer-generated copy reads "Paid for From Personal Funds" at the bottom, this Office does not believe, and Respondents have never contended, that this is the actual stationery on which the letters may have actually been sent. One indicator of this is the October 21, 1996 date on the letter, even though the letter relates to the 1994 general election.

solicitation from Joseph Kadow, let alone a solicitation on Outback letterhead. Cracker Barrel stated that no employees had any recollection of receiving a solicitation for a contribution to the Sharpe campaign. Darden Restaurants stated that the files of the Corporation contained no information as to whether anyone received a solicitation from Joseph Kadow. S&A Restaurants was unable to locate any documents which related to Mark Sharpe; S&A Restaurant PAC responded separately, and also could not locate any information related to a solicitation. TGI Fridays could not locate any information relating to solicitations on behalf of the Sharpe campaign. Sizzler International stated it could not identify any documents or individuals responsive to the Commission's request.<sup>7</sup>

The second document which raised questions was a computer-generated copy of a letter to Dan Doyle of Danka Industries, which was apparently written in response to a solicitation from Mr. Doyle for contributions to Sandy Mortham's race for Florida Secretary of State. Attachment 2. The letter stated that it was enclosing Chris Sullivan's personal check for \$500 and Outback PAC's check for \$500. The letter further stated that "[w]e hope to send additional checks from Outback officers and employees shortly." Switching to the Sharpe-Gibbons race, the letter then stated that "[a]ll of us at Outback Steakhouse believe Mr. Sharpe would be an excellent Congressman and would do a far better job of representing the constituency in the 11th District than Mr. Gibbons has . . . . We are firmly committed to the Sharpe campaign and are hosting a fund-raiser at Bob Basham's home on September 17th. Newt Gingrich will be the guest of honor. I hope you can attend." The letter bears the typed signature line: "Joseph J. Kadow, Vice-President and General Counsel."

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<sup>7</sup> Of the five corporations in questions, the separate segregated funds of all but Sizzler, Inc. made contributions to the Sharpe campaign. There is no evidence as to how these contributions were sent to the Sharpe campaign.

Again, Outback has stated that it is not sure that such a letter was sent out, although it seems unlikely that such a fact-specific letter would be drafted if it were not to be issued.<sup>8</sup> The response of Danka to the Commission's subpoena states that they have no documents which relate to the candidacy of Mark Sharpe, and that no solicitation efforts with Danka personnel were undertaken. However, Danka did produce a personal check from Dan Doyle dated September 23, 1994, signed by his secretary, Ann Galatro, and made out to Sharpe for Congress. (In addition, Ann Galatro told the Commission's investigator that she was solicited by Mr. Doyle, who reimbursed her for her contribution. This issue is discussed further below.)

The third document is a computer-generated copy of a letter to Jim Williams of Coca-Cola Fountain, Inc., returning a check for the Sharpe campaign made payable to Outback. Attachment 3. The typed signature line reads "Carol Brennan." The letter states, "On behalf of Bob Basham, we thank you for your contribution to the Sharpe campaign." The letter then informs Mr. Williams that, "[w]hile we would be happy to endorse this check over to the Sharpe campaign, because of the Federal Election Commission's strict rules and guidelines, it would be more appropriate for you to reissue a check made payable to Sharpe for Congress. You may send the check to us and we will forward it to campaign headquarters. . . . Again, thank you on behalf of Outback Steakhouse and especially on behalf of the Sharpe campaign."

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<sup>8</sup> As noted in the First General Counsel's Report dated August 28, 1997, Joseph Kadow has stated to the Commission that, with regard to the September 17, 1994 fundraising dinner for Mark Sharpe held at the home of Robert Basham, Outback PAC "arranged and paid most of [its] costs." Kadow has further stated that these costs were reported as in-kind contributions to the Sharpe campaign. In addition to Kadow, "a number of individuals -- including other campaign officials and several Outback executives -- contributed their time and effort to the event."

Mr. Williams did not respond in writing to the Commission's subpoena,<sup>9</sup> but did speak with the staff attorney assigned to this matter. Mr. Williams told the staff attorney that he had no documents related to his 1994 contribution to the Sharpe campaign, and that he did not recall whether any solicitation he received was on Outback stationery.

The last relevant computer generated document is the first of two letters from Kadow to John W. Meshad. Attachment 4. The letter references a conversation between Kadow and Meshad that occurred over the Fourth of July holiday in 1994, and then describes in detail the concerns of the restaurant industry with respect to Congressman Gibbons' support of the Clinton health plan. The letter touts Mr. Sharpe's chances against Mr. Gibbons, and suggests that, if Sharpe defeated Gibbons, "we believe that the employer mandate on health care would be diffused for some time to come." The letter then urges Meshad and his associates in the restaurant industry to make contributions to the Sharpe campaign. The letter states, "If you are inclined to contribute, please send your check to me. I have been collecting checks and giving them to Mark to ensure that he understands the extent of support he is receiving from the restaurant industry." The typed signature line reads: "Joseph J. Kadow, Vice-President and General Counsel."<sup>10</sup>

In response to the Commission's subpoena, Mr. Mesham produced a signed copy of this first letter. The letter was issued on Outback stationery. Attachment 5. This letter thus

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<sup>9</sup> The subpoena, which was addressed to Coca-Cola Fountain's registered agent, apparently was never received by Mr. Williams.

<sup>10</sup> In what is apparently the subsequent letter, Mr. Kadow thanked Mr. Meshad for his "previous contribution" and requested additional contributions from Mr. Meshad and his wife to buy additional television time. Although the letter does not specifically mention Outback, the address given for remittance of the contributions is that of Outback's headquarters.

constitutes definitive evidence of at least one instance in which Outback solicited contributions for the Sharpe campaign from outside its restricted class.

In a further attempt to determine the extent to which Outback may have solicited contributions for the Sharpe campaign from outside its restricted class, this Office has also tried to survey 28 individuals who appeared on a solicitation list produced by Joseph Kadow. Ten of these people could not be located or have not responded to calls. Four people would not talk to a representative of this Office. Six people were clearly Outback-connected and thus additional information from them was not pursued.

The remaining eight individuals gave the following responses: Howard Jenkins and Raymond Leich each stated that his contribution to the Sharpe campaign had nothing to do with Kadow or Outback. Debra Frey stated that she did not know how she and her husband were solicited, but that they did have a prior Outback connection. James Mellody did not believe he was solicited by anyone associated with Outback. Edward C. Droste did not believe he was solicited by Joe Kadow. Hoyt R. Barnett's response suggests that he was not solicited by anyone from Outback.<sup>11</sup> Robert McLean was assertedly solicited by Joe Kadow; Outback is a client of McLean's law firm. McLean does not know where he mailed the check. Paul Samson believes he was solicited by Joe Kadow, whom he describes as a good friend.

Statements by Outback executives do not provide any additional evidence of the scope of solicitations outside of Outback's restricted class. Joseph Kadow has stated that he focused his solicitation efforts on friends and acquaintances who were primarily associated with the food service industry. Chris Sullivan has stated that the individuals whom he contacted were friends

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<sup>11</sup> Mr. Barnett stated that he does not know Kadow but knows Basham, that he and Basham have played golf together, but that he has never discussed politics with Basham.

and associates, that some solicitations occurred in the course of otherwise non-related conversations, while solicitations were the purpose for other phone calls, and that he has no recollection of whom he solicited. Robert Basham stated that he contacted individuals who were either personal friends, business associates, or Outback business partners. In addition, and as stated above, Basham hosted a Sharpe fund-raiser at his home which was paid for by the Outback PAC.

While it is conceivable, and even likely, that Outback officials solicited many contributions for the Sharpe campaign from outside Outback's restricted class, the only concrete evidence of such activity is the letter to John Mesham. This Office does not believe that further investigation will yield additional evidence in this regard.<sup>12</sup>

### **3. Collection by Outback of Contributions and Delivery to the Sharpe Campaign**

An additional issue in this matter is whether Outback personnel collected and delivered checks to the Sharpe campaign, regardless of whether the contributions were from inside or outside Outback's restricted class. Evidence of such activity is as follows: Sharpe campaign worker Terry Ranck stated that Kadow would come to the campaign office once or twice a week in the evening and would hand Sharpe what appeared to be contribution checks or an envelope

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<sup>12</sup> In the Report dated May 22, 1998, this Office described a document entitled "Sharpe for Congress Campaign Plan 1994" which had been obtained through the Commission's initial discovery efforts, and which appeared to have been redacted. This Office noted that the portions which appeared to have been redacted may have more fully described Outback's role in the Sharpe campaign effort, and the Commission accordingly issued a subpoena to Jon Coley, the person from whom the document was obtained, so as to acquire an original copy of the campaign plan. In response to the subpoena, Mr. Coley informed the Commission that he no longer was in possession of any copies of the document. This Office has been unable to otherwise demonstrate that the document was redacted and that any redaction involved Outback.



she believed contained contribution checks. Likewise, another campaign worker, Missy Shorey, recalls approximately three occasions when she stopped by the Outback office's front desk to pick up contributions.

Most compelling is the admission by Joseph Kadow in the letter to John Mesham described above, in which he states that "I have been collecting checks and giving them to Mark to ensure that he understands the extent of support he is receiving from the restaurant industry." This latter statement alone makes clear that, not only did Kadow collect contributions to the Sharpe campaign at Outback headquarters, but that he did so in his capacity as an Outback executive, not as a Sharpe fundraiser. Moreover, in responding to Commission inquiries, Kadow has never denied that he encouraged individuals to send their contributions to him at Outback, or that he collected contributions at Outback and delivered them to the Sharpe campaign. Thus, even though the investigation in this matter has produced little evidence as to the exact number or amount of contributions collected at Outback headquarters and delivered to the Sharpe campaign, there is clear evidence that such activities were undertaken.

#### **4. Corporate Use of Aircraft**

The original source for the allegation that Joseph Kadow flew around the country in aircraft paid for by Outback in order to collect and solicit contributions for the Sharpe campaign came from a statement attributed to Rick Fontaine, the Sharpe Committee's treasurer, in the *Tampa Tribune* article. The article stated that, "[a]s Outback's corporate attorney, Fontaine said, [Joseph] Kadow would travel often to Outbacks around the country and then return with campaign checks." In the response submitted by Outback and Kadow to the complaint, no mention was made of this allegation. Thus, the available information at the time supported a reason to believe finding based on this theory.

In response to the Commission's reason to believe finding, Joseph Kadow stated, "I told the *St. Petersburg Times* the following, 'It's absurd on its face that I would fly around the country to pick up checks.' . . . I reaffirm now that I never traveled with the purpose of soliciting or receiving checks nor did I ever solicit or receive checks while on business, personal or any other kind of trip." Mr. Kadow and Outback have produced both Outback flight logs for trips taken by Kadow and Kadow business expense reimbursement requests. A review of these materials shows no correlation between the dates of his trips and the reporting by the Sharpe campaign of contributions from those geographic areas.<sup>13</sup> Accordingly, there no longer appears to be any basis to conclude that such activity occurred.

#### **5. Excessive Contribution/Contribution in the Name of Another**

As noted above, during the investigation in this matter, Ann Galatro, the secretary to Dan Doyle of Danka Industries, informed the Commission's investigator that she had made a contribution to the Sharpe campaign at the request of Mr. Doyle, and that Mr. Doyle had reimbursed her for her contribution.<sup>14</sup> If true, this activity would constitute violations of 2 U.S.C. §§ 441a(a)(1)(A) and 441f. Moreover, given that such an effort occurred at the same time as Mr. Doyle's own \$1,000 contribution to the Sharpe Committee, it appears that Mr. Doyle was aware of the statutory limitation on personal contributions, and purposefully attempted to evade it. Accordingly, this Office recommends that the Commission find reason to believe that Dan

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<sup>13</sup> As noted above, despite the efforts of this Office - numerous phone calls to Florida and Arizona and interrogatories to witnesses and respondents in this matter - this Office cannot locate Rick Fontaine, and is thus unable to question him about the statement attributed to him.

<sup>14</sup> The Sharpe Committee reported receiving a \$1,000 contribution from "Ann Galatzo" of "Damka Industries" on October 29, 1994. While it might be supposed that the Sharpe Committee mistook the check signed by Ann Galatro on behalf of Mr. Doyle, *see supra*, as a contribution from her, the Sharpe Committee reported its receipt of a \$1,000 contribution from Dan Doyle on October 28, 1994, thus making such a possibility unlikely.

Doyle knowingly and willfully violated 2 U.S.C. §§ 441a(a)(1)(A) and 441f and that it approve the attached Factual and Legal Analysis. Attachment 6.

#### **D. Resolution of Violations**

The evidence in hand demonstrates the keen interest Outback placed in the 1994 Sharpe-Gibbons race. That interest was expressed not only through legitimate activity - the solicitation of personnel within Outback's restricted class and the hosting of a fundraiser by Outback's separate segregated fund - but also through illegal activity - the solicitation of personnel outside the restricted class and the collection and delivery of contributions.

Outback has suggested that the print outs of letters that they have provided may not have been sent, and that, therefore, there is no real evidence of improper corporate activity. However, John Meshad, an individual who was not within Outback's restricted class, has produced a copy of a letter on Outback stationery in which he was solicited for a contribution to the Sharpe campaign. In this letter, Joseph Kadow admits that he has been collecting contributions at Outback headquarters and then delivering them to the Sharpe campaign. It is clear from the letter that in doing so, Kadow was acting in his capacity as an officer of Outback. The Commission has been unable to obtain actual copies of other letters produced as print-outs by Outback - the letters to Dan Doyle and Jim Williams - but the contents of the print-outs are so fact-specific, it is unlikely that they were drafted unless they were sent out or, at the very least, unless they accurately reflected what was occurring. Thus, it appears that Outback engaged in significant illegal activity in order to assist the Sharpe campaign.

This Office does not believe that additional investigation would reveal any significant information regarding the exact amounts involved. In addition, the activity at issue took place in 1994 and thus the statute of limitations in this matter will run in the fall of 1999. This Office

does believe, however, that an effort should be made to obtain from Outback admissions of these violations and a civil penalty.


#### **IV. RECOMMENDATIONS**

1. Offer to enter into conciliation with Outback Steakhouse of Florida, Inc. and Joseph Kadow, prior to findings of probable cause to believe, and approve the attached conciliation agreement.

2. Find reason to believe that Dan Doyle knowingly and willfully violated 2 U.S.C. §§ 441a(a)(1)(A) and 441f, and approve the attached Factual and Legal Analysis and the attached conciliation agreement.
3. Approve the appropriate letters.

Lawrence M. Noble  
General Counsel

7/6/99  
\_\_\_\_\_  
Date

BY:   
\_\_\_\_\_  
Lois G. Lerner  
Associate General Counsel

**Attachments:**

1. Letter to five corporations
2. Letter to Dan Doyle
3. Letter to Jim Williams
4. Letter to John Meshad as produced by Outback
5. Letter to John Meshad as produced by John Meshad
6. Factual and Legal Analysis for Dan Doyle
7. Conciliation agreement with Outback and Joseph Kadow
8. Conciliation agreement with Dan Doyle

Staff Assigned: Tony Buckley

# **Friends of Mark Sharpe**

## **Volunteer Action Plan**

### **I. Organization**

The volunteer coordinator will be responsible for recruiting volunteers for all aspects of the volunteer plan; coordinating all volunteer activities; scheduling office volunteers; and maintaining an accurate up-to-date volunteer database.

The volunteer coordinator should work immediately to build the volunteer organization using the existing database, seeking contacts from key current and former volunteers and through personal contacts. Organization should be set-up as follows:

#### **Office Based**

*Recruitment Chairman* -- should be an individual who has time to go to events with Sharpe (candidate forums, rallies, etc.), other public events and club meetings. It would be a good idea to have a college student ( or other young individual) and a senior citizen in order to best target the different groups. In addition to face-to-face recruitment, Volunteer Coordinator(s) will be needed to coordinate mailings and phone banks to various organization lists.

#### **Target Groups:**

- Republican clubs and county executive committee
- Previous campaign volunteers (Pres. Primary and past gubernatorial races)
- Churches (Seminole Pres, Idlewild)
- Veterans (VFW's and American Legions)
- Seniors (John Knox Village, other retirement homes)
- Students (Recruit a coordinator at each one)
  - USF
  - University of Tampa
  - Hillsborough Community College
  - High Schools

#### **Potential volunteers should be ...**

- identified
- ask specifically what they are willing to do
  - precinct walks
  - phone banks at headquarters
  - phone banks at home
  - work at headquarters
  - put up signs
  - work events
- given talking points about what they will be doing
- sent a letter or postcard from Sharpe as a welcome

*Sign Coordinators* -- Will receive lists of yard sign request and place in yards as requested. Will

also install larger signs. Will work directly with Volunteer Coordinator and Mike Brown who will prepare lists.

*Database Coordinator* -- Will be the recipient of all information relating to new volunteers -- from mail returns, off the street, event sign-in sheets, etc. -- and will key into database and provide weekly reports to Paul Moore/Mike Brown of counts of each type of volunteer to date. This will include persons requesting yard signs and all volunteer activities. Will also be responsible for maintaining and updating database from phone banks, mail, etc.

### **Non-Office Based**

*Regional Coordinators* -- will be recruited in the 10 geographical regions of the district. Responsibilities will be as follows:

- Provide information to help schedule Sharpe at local events
- Provide lists of local clubs for volunteer recruitment
- Help recruit volunteers for all activities
- Schedule and coordinate precinct walks
- Secure locations for large signs and signs in businesses
- Schedule coffees and socials in their region
- Help coordinate volunteer activities in their area (bumper stickers, rally turnout, etc.)

- \*Brandon
- \*Carrollwood
- \*Forest Hills
- \*Temple Terrace
- \*South Tampa/West Shore Area
- \*South Tampa/Hyde Park & the Islands
- \*Town and Country
- \*North Tampa/Seminole Heights
- \*West Tampa
- \*East Tampa

*Phone Bank Coordinators* -- at least 10 should be recruited -- but there is no need for regional breakdown -- to perform the following duties.

- Recruit phoners who will report directly to them (call from home or phone banks)
- Locate business who will allow campaign to use phones
- Coordinate volunteer list exchange with Volunteer Coordinator (after list have been phoned, they must be turned in to headquarters)

## **II. Volunteer Activities**

*Neighborhood Walks* -- Coordinated by Volunteer Coordinator and Regional Coordinators -- Targeted voter lists to be provided by headquarters. Walks should be held Saturday mornings, early evenings on weekdays or Sunday afternoons. Door hangers will be provided by headquarters. Hangers should not be left unless the door is knocked on first. Lists of favorable and unfavorable and undecided should be noted on lists and provided back to headquarters. **Favorables will be ask if a bumper sticker can be placed on their car(s).** Targeted precincts,

and corresponding walking lists, will be completed by Labor Day and made available to regional coordinators.

*Phone Banks* -- Coordinated by Volunteer Coordinator and Regional Coordinators --

Organization of previously discussed. Scripts, lists and basic talking points must be provide by headquarters. **Two Types of Calls:** *Voter Identification and turnout* -- Favorables will be asked if they want a bumper sticker and/or yard sign.

*Event Turnout* -- can be used to boost turnout for rallies and parties. In addition, call out of headquarters will be made to boost fundraising events. Phone banks will also be used to canvass volunteer database.

*Sign Waving* -- Coordinated by Regional Coordinators -- At key intersections during rush hour on weekday mornings and evenings. At major public events including, but not limited to, Bucs and Mutiny games. Also consider Lightning games in new Ice Palace, Yankees games, USF concerts and events, Guavaveen and more!

*Bumper Sticker Branding* -- Coordinated by Volunteer Coordinators -- At all Sharpe events including rallies, fundraisers, etc.

*Caravans* -- Coordinated by Volunteer Coordinators -- On Saturdays to drive by little league baseball games, football games, malls, professional sporting events and any major public events.

*Car Washes* -- Coordinated by Student Coordinators -- Will be used a trade-off for a car wash with high school or college student volunteers. Purpose is for public relations, sign waving attention and **bumper sticker branding**.

*Literature Distribution* -- Coordinated by Volunteer Coordinator and Regional Coordinators -- At public events, same as sign waving. Shopping centers and supermarkets where allowed (need to check policies at larger places.) This is a major priority for BRANDON and TEMPLE TERRACE.

*Office Help* -- Coordinated by Volunteer Coordinator -- Assisting in mail preparation, looking up phone numbers, copying documents, running errands, etc.

*Election Day Turnout* -- Coordinated by Volunteer Coordinator and Campaign Staff -- Sign wavers at polls, phone bank callers, poll workers in targeted precincts and Sharpe caravans.





FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE  
GENERAL COUNSEL

FROM: MARY W. DOVE/VENESHE FEREBEE-VINES  
COMMISSION SECRETARY

DATE: JULY 14, 1999

SUBJECT: MUR 4434 - General Counsel's Report  
dated July 6, 1999.

The above-captioned document was circulated to the Commission  
on Wednesday, July 7, 1999.

Objection(s) have been received from the Commissioner(s) as  
indicated by the name(s) checked below:

Commissioner Elliott	<u>XXX</u>
Commissioner Mason	<u>XXX</u>
Commissioner McDonald	—
Commissioner Sandstrom	—
Commissioner Thomas	—
Commissioner Wold	—

This matter will be placed on the meeting agenda for Tuesday, July 20, 1999.

Please notify us who will represent your Division before the Commission on this  
matter.